THE HON'BLE SRI JUSTICE A. GOPAL REDDY

W.P.No.22596 of 1995

Dated:31-01-2007

Between:-

Enoch

..Petitioner

And

Union of India through Secretary,
The Government of India, Ministry of Railways,
New Delhi and three others.

..Respondents.

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:O R D E R:

This petition is filed under Article 226 of the Constitution of India for issuing a writ of Mandamus, declaring the action of the respondents in not promoting the petitioner to the post of Assistant Security Commissioner ignoring his seniority in the Railway Protection Force as illegal and violative of Articles 14 and 16 of the Constitution of India and for a further direction to the respondents to promote him to the post of Assistant Security Commissioner with retrospective effect from the date on which his juniors were promoted to the above said post.

The petitioner joined in the services of Railway Protection Force as

Sub-Inspector with effect from 25-02-1963 and was working as such. His appointment was by direct recruitment from the Railway Services Commission as contemplated under Rule 21 of the Railway Protection Force Rules, 1959 (for short 'the Rules'). The petitioner is entitled to promotions to next higher posts, i.e., Inspector Grade-II and Inspector Grade-I. Rule 24 (1) of the Rules governs the said promotions. Rule 24 (1) of the Rules reads as under:

"24 Promotions: (1):- Promotions from one class to another

among members of the Force shall be made on the basis of selection by committee appointed in this behalf and in accordance with the regulations defining eligibility of the candidate for such selection and the tests which may include written, oral and practical tests. Promotion in grades shall, however, be on the basis of seniority cum suitability."

Sub-Rule (4) of Rule 24 of the Rules provides that the age limit, length of service and other mattes relating to promotions and the procedure for determining seniority or appointment of promotions shall be such as may be prescribed by the Railway Protection Force Regulations, 1966 (for short 'the Regulations').

The Regulations were framed with the approval of the Central Government. The petitioner claims that he became eligible for promotion to the post of Inspector on completing the requisite length of service and other conditions. The petitioner appeared for selection process to the post of Inspector in 1973, 1976, 1979, 1981, 1983, 1984 and 1988. He was successful in the written examination, but the selection committee, after perusing the Annual Confidential Records, have not selected him for the post of Inspector

Grade-II. The 6th selection which was held in 1984 was exclusively based on the confidential records without there being any written test and viva voce which is called 'Up Gradation scheme' which was offered as a gift to the senior employees of all the departments in the Railway Protection Force. The petitioner was denied promotion under 'Up Gradation scheme', though he being the senior most employee in the department. The petitioner was not promoted on the ground that disciplinary cases were pending against him at the earlier point of time; and the proceedings initiated against him were dropped in the year 1987 as per the observations made by the Hon'ble High Court in W.A.No. 186 of 1980 dated

16-12-1986. The contention of the petitioner is that he should have been promoted as Inspector, Assistant Security Commissioner and Divisional Security Commissioner with retrospective effect as per his seniority on par with his juniors. The denial of such request of the petitioner by the respondents is arbitrary and illegal and sought for the reliefs as referred to above.

The Chief Security Commissioner, Railways representing the fourth respondent, filed counter on behalf of the respondents stating that the petitioner while working as Sub-Inspector in Workshop, Hubli from 19-1-1965 to
16-02-1968 was served with a charge sheet under Rule 44 of the Rules along with one Sri Safdar Baig, Sub-Inspector (Fire), Hubli and five other subordinate Railway Protection Force Officials, for misuse of Mobile Tank Unit of the Fire unit at Hubli on the night of 11/12-01-1968 and surreptitiously removing costly Bronze Axle Boxes from the Railway workshop and for delivering them to outsider. As the explanation offered by the petitioner was not satisfactory, a regular departmental inquiry was ordered appointing the then Chief Security Officer, Secunderabad, as Inquiry Officer, who after conducting the enquiry submitted his report holding that the charges framed against the petitioner and others 'proved'. Accepting the said findings, a show cause notice was issued to the petitioner and Sri Safdar Baig proposing the penalty of removal from service as the charges were held proved against them. After considering the explanation to the show cause notice, the petitioner was removed from service by an order dated 18-02-1971. The appeal preferred by the petitioner for his removal was set aside by ordering *de novo* enquiry and also holding that the enquiry officer has no jurisdiction to conduct the enquiry. The petitioner and
Sri Safdar Baig filed W.P.No. 1639 and 1638 of 1973 respectively

aggrieved by the direction of conducting fresh enquiry. The said writ petitions were allowed with a direction that fresh proceedings be drawn up from the stage of receipt of the report of the first enquiry officer and to proceed in accordance with Rule 44(1) of the Rules. Pursuant to the order passed in W.P.No. 1639 of 1973 a show cause notice was issued by the Chief Security Commissioner to the effect that he is disagreeing with the findings of the Inquiry officer and drawn up his own findings wherein it is held that the charges framed were 'as proved' and proposed the penalty of removal from service. The said show cause notice was challenged in W.P.No. 3725 of 1975 and the said writ petition was dismissed, as the said show cause notice was subsequently withdrawn and thereupon the Chief Security Officer had taken up the matter from the stage of submission of the findings of the first enquiry officer and his disagreement with the findings of the inquiry officer holding that the charges 'as proved' and issued a show cause notice to the petitioner proposing to impose the penalty of removal from service and also placing the petitioner under suspension. The petitioner had challenged the show cause notice and order of suspension in W.P.No. 5240 of 1997. The said writ petition was allowed on the ground that the Assistant Security Officer was not the disciplinary authority; that he is not competent to frame the charges; that the disciplinary authority's findings that the charges were proved are based on 'no evidence'; and that the disciplinary authority recorded findings on matters which were not the subject matter of the original charges framed by the Assistant Security Officer and therefore, the show cause notice issued by the Chief Security Officer on the basis of such findings is also illegal and invalid. Aggrieved the writ appeal No.186 of 1980 filed was dismissed observing that the Assistant Security Officer is competent to frame charges against the Sub-Inspector as per Rule 44(ii) of the Rules and that the show cause

notice issued by the Chief Security Officer is illegal and invalid. It is also further observed by the Division Bench that the authorities can issue a fresh and valid show cause notice in accordance with law bearing in mind that charges were framed in the year 1968 and hence the Disciplinary Authority had taken a decision not to issue show cause notice in the month of August, 1987. Subsequent to the dropping of further proceedings, the petitioner was selected and promoted as Inspector Grade-II on 14-12-1987 and further promoted as Inspector Grade-I on 01-01-1996 and retired from service on 28-02-1998 on attaining the age of superannuation.

It is further contended that since the post of Assistant Security Commissioner is a selection post, the incumbent will be selected from the cadre of Inspector. Unless the petitioner is promoted to the post of Inspector, he is ineligible to be promoted as Assistant Security Commissioner. Even the post of Inspector Grade-II is also a selection post. By considering his confidential report, the petitioner was not selected by the Departmental Promotions Committee in the years 1973; 1976; 1979; 1981; 1983; 1984 and 1988. Subsequently the departmental proceedings against the petitioner were dropped and hence his case was not considered for promotion at the earliest point of time.

A reply affidavit has been filed by the petitioner to the above said counter. All the persons, who have recorded the confidential reports of the petitioner, were members of Departmental Promotion Committee, and therefore ignoring his claim for promotion to the post of Inspector Grade-II is illegal; and if he is really slow and poor in taking initiation; poor in leadership, man-management and enforcing discipline, bad in conduct, loyalty and fidelity right from 1968 to 1985, respondents would not have honoured 24 cash awards for the good work done by him and would not have utilized his services as a teacher to teach discipline to the students in Training Center for many

years. These circumstances have not been explained by the respondents. Therefore, the adverse annual confidential records were written intentionally to mar his prosperity.

Learned counsel for the petitioner reiterated the submissions which were urged in the reply contending that when the petitioner was honoured with 24 cash awards and his services were utilized as teacher to teach the trainees in training centers for many years, he cannot be denied the promotions. Therefore, from the very fact that he was honoured 24 cash awards and when his services were utilized as teacher goes to show that Annual Confidential .Records were written intentionally by his superiors who were in the departmental promotion committee which resulted in his non-selection in the year 1985. When selections held in the year 1984 without there being any written test, as a gift to the senior employees of all the department, exclusively basing on service, the petitioner should have been considered for promotion to the post of Inspector and Assistant Security Commissioner from the said date when his juniors were promoted. In view of the same, the petitioner could be given a notional promotion at least from the year 1984.

On the other hand, learned counsel for the respondents contends that merely because the petitioner was honoured with cash awards that itself is not sufficient to be a merit for the purpose of selection to the post of Inspector and Assistant Security Commissioner. The posts of Inspector and Assistant Security Commissioner are selection posts. When the performance in the lower cadre is recorded as poor in respect of leadership, man-management etc., he cannot be promoted to the post of Inspector, in which he has to discharge onerous responsibility. Merely because the writ petition filed by the petitioner was allowed on the ground that report of the inquiry officer does not relate the subject matter of original charges

framed, he was not exonerated from the charges and left it open to the department to take action strictly in accordance with law. In view of the same, the petitioner is not entitled to be promoted.

Admittedly by adverse remarks in the confidential reports from 1968 to 1987 recorded against the petitioner as regards to his intellectuality, initiation, conduct, capacity of enforcing discipline, promptness in disposal of work, control of crime etc., in the confidential records from 1969-70 it was recorded in respect of Conduct: has to improve; Capacity of commanding respect: has to improve; Man management: has to improve; Control of crime: has to improve; Periodical inspection and surprise visits carried out in his charge; has to improve; Attitude towards subordinates; has to improve. In the year, 1973 it was recorded that Grading is average and the CSO's remarks are poor specimen; In 1974-75 it was recorded that initiative & driver; Leadership-Poor; Man Management--poor, Grading is average. In the year 1981 it is recorded that the Conduct--bad; Promptness in disposal of work--slack; Knowledge and Drill--not attending parades; Loyalty and Fidelity-bad; Grading below average and he is not prompt and accurate in submitting reports and returns to higher authorities. In 1983 it was recorded that the Loyalty and Fidelity: puts up petitions against his Superior Officers and indices subordinates against his officers, indulges in loose talk and baseless allegations.

It is not disputed that the petitioner's next promotion is Inspector Grade-II which is a selection post and when he was successful in the written examination and in viva voce, after considering his confidential reports, the Departmental Promotion Committee had not selected him in view of the fact that adverse remarks were recorded in the annual confidential reports. It is not in dispute that he was promoted as Inspector Grade only on 14-11-1987 and further promoted as Inspector Grade-I on 01-01-1996. The petitioner's only grievance is that he is entitled to be promoted with a date anterior to the date on which he

was promoted. He ought to have questioned the same on being promoted without anterior date. The very fact is that the petitioner is claiming promotion from 1984 by filing the writ petition in the year 1995. The petitioner has not explained the delay why he has not chosen to challenge the same when he was promoted on 14-11-1987. Merely because the petitioner was successful in the writ ten examination and was called for viva voce, his promotion to the next higher post is not automatic and the DCP is under the obligation to verify performance in the substantive post and confidential records as to leadership, man management qualities etc., for effecting promotion. When the past records of the petitioner in respect of his performance continuously disclose poor or bad, he cannot claim promotion on par with his juniors.

Having kept quite for eleven years after denying promotion under the Up-gradation Scheme held in the year 1984 and having accepted the promotion of Inspector Grade-II on 14-11-1987, he waived his right, if any, and it is not open for him to contend that he is entitled for promotion from 1984. The writ petition fails and it is accordingly dismissed. No costs.

A. GOPAL REDDY, J

Dated: 31-01-2007.
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